

INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
MARICOPA COUNTY

THIS AGREEMENT is entered into this date November 18, 2005, pursuant to Arizona Revised Statutes § 11-951 through 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and the MARICOPA COUNTY acting by and through its BOARD OF SUPERVISORS (the "County").

1. The State is empowered by Arizona Revised Statutes § 28-401 to enter into this Agreement and has delegated the undersigned the authority to execute this Agreement on behalf of the State.
2. The County is empowered by Arizona Revised Statutes § 11-521 and 11-951 to enter into this Agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the County.
3. Congress has authorized appropriations for the erection of automatic warning signals, automatic gate arms, plank crossings, pavement markings, and other railroad crossing related appurtenances.
4. A project within the boundary of the County has been selected by the County; the field survey of the project has been completed; and the plans, estimates and specifications have been prepared and, as required, submitted to the State and Federal Highway Administration ("FHWA") for their approval.
5. The interest of the State for this Project is in the acquisition of Federal funds for the use and benefit of the County and is authorized as the designated agent. Funds expended for the Project, are authorized by reason of Federal Law and Regulations.

NO. 27840
Filed with the Secretary of State
Date Filed: 11-18-05
Janice K. Brewer
Secretary of State
By: [Signature]

6. The work embraced in this Agreement is for installing cantilevers with LED flashers, in addition to upgrading existing incandescent flashers with LED flashers and installing a RTU. The estimated cost is as follows:

Furnish and Install Cantilever with LED Flashers	
Federal Aid Funds @ 100%	<u>\$ 67,914.00</u>
Total Cost of the project	\$ 67,914.00

THEREFORE, in consideration of the mutual agreements expressed herein, it is agreed as follows:

II. SCOPE OF WORK

1. The State shall:

a. Submit a program containing the aforementioned project to FHWA with the recommendation that it be approved for construction.

b. If such project is approved for construction by FHWA and the funds are available for construction of the project, the State with the aid and consent of FHWA will authorize the County to proceed with the work and will request the maximum federal funds available.

c. Should some unforeseen conditions or circumstances increase the cost of said work required by a change in the extent or Scope of Work called for in this Agreement, the State shall not be obligated to incur any expenditure, on behalf of the County, in excess of the amount referenced herein, unless and until so authorized in writing by the County and approved by FHWA.

2. The County shall:

a. Acquire any necessary right-of-way for this project and hereby certifies that all necessary rights-of-way have been or will be acquired.

b. Once acquired, remove from the County right-of-way all obstructions or unauthorized encroachments of whatever nature, either above or below the surface of the roadway, and hereby certifies that all obstructions and encroachments have been or will be removed there from.

c. Agree not to permit or allow any encroachments, except those authorized by permit, upon, or private use of, the County right of way. In the event of any unauthorized encroachment or improper use, the County shall take all necessary steps to remove or prevent any such encroachment or use.

d. Upon completion of construction, be responsible to provide for, at its own cost and as an annual item in its budget, proper and perpetual maintenance; exclusive of maintenance by the Railroad Company of its facilities, to include, but not be limited to, traffic signals, signs, islands, curbs and markings necessary for the purpose of regulating, warning and guiding traffic.

III. MISCELLANEOUS PROVISIONS

1. The State assumes no financial obligation or liability under this Agreement, or for any resulting construction project. The County, in regard to the County's relationship with the State only, assumes full responsibility for the design, plans and specifications, reports and the engineering in connection therewith, the construction of the improvements contemplated, cost over-runs and construction claims. The County will require its contractor(s) to name the State and ADOT as an additional insured in the contractor(s) insurance policies. The County will also require its contractors to name the State as an additional indemnitee in the County's contracts with its contractor(s). It is understood and agreed that the State's participation is confined solely to securing Federal aid; that any damages arising from carrying

out, in any respect, the terms of this Agreement or any modification thereof shall be solely the liability of the County and that, to the extent permitted by law, the County hereby agrees to save and hold harmless and indemnify from loss the State, any of its departments, agencies, officers or employees from any and all cost and/or damage incurred by any of the above and from any other damage to any person or property whatsoever, which is caused by any activity, condition, or event arising out of the performance or non performance or negligent performance of any provisions of this Agreement by the State, any of its departments, agencies, officers and employees, the County, any of its agents, officers and employees, or any of its independent contractors. Costs incurred by the State, any of its departments, agencies, officers or employees, shall include in the event of any action, court costs, expenses of litigation or attorneys' fees.

2. The cost of the construction and the construction engineering work covered by this Agreement is to be borne by FHWA and the County, each in the proportion described or as fixed and determined by FHWA as stipulated in this Agreement. Therefore, the County agrees to furnish and provide the difference between the total cost of the work provided for in this Agreement and the amount of Federal aid received.

3. This Agreement shall remain in full force and effect until completion of the work; provided, however, that any provisions in this Agreement for maintenance shall be perpetual, unless assumed by another governmental entity.

4. This Agreement shall become effective upon filing with the Secretary of State.

5. This Agreement may be cancelled in accordance with Arizona Revised Statutes § 38-511.

6. The provisions of Arizona Revised Statutes § 35-214 are applicable to this Agreement.

7. In the event of any controversy, which may arise out of this Agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes § 12-1518.

8. This Agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 121-1-12213) and all applicable Federal regulations under the Act including 28 CFR Parts 35 and 36. The parties to this Agreement shall comply with Executive Order Number 99-4 issued by the Governor of the State of Arizona, and incorporated herein by reference regarding "Non-Discrimination".

9. Non-Availability of Funds: Every payment obligation of the State under this contract is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this contract, this contract may be terminated by the State at the end of the period for which the funds are available. No liability shall accrue to the State in the event this provision is exercised, and the State shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

10. All notices or demands upon any party to this Agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Arizona Department of Transportation
Joint Project Administration
205 S. 17th Avenue – Mail Drop 616E
Phoenix, AZ 85007
(602) 712-7525

Maricopa County
Attn: Nicolaas Swart
2901 W. Durango Street
Phoenix, AZ 85009
(602) 506-0599

11. Pursuant to Arizona Revised Statutes § 11-952, (D) attached hereto and incorporated herein is the written determination of each party's legal counsel that the parties are authorized under the laws of this State to enter into this Agreement and that the Agreement is in proper form.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

MARICOPA COUNTY

STATE OF ARIZONA

Department of Transportation

By 
MAX WILSON, Chairman
Board of Supervisors

By 
SUSAN TELLEZ
Contract Administrator

ATTEST:

By 
FRAN MCCARROLL
Clerk of the Board

OCT 19 2005

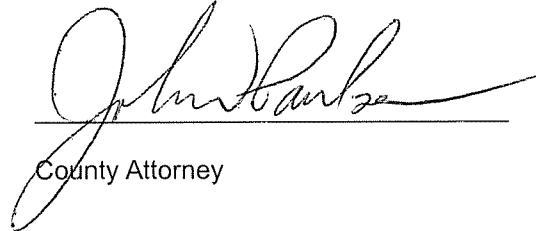
G:05-047-Maricopa Cty-Bell Rd LED Flashers-slc

JPA 05-047

APPROVAL OF MARICOPA COUNTY

I have reviewed the above referenced Intergovernmental Agreement between the DEPARTMENT OF TRANSPORTATION, INTERMODAL TRANSPORTATION DIVISION, and MARICOPA COUNTY, an Agreement among public agencies which, has been reviewed pursuant to A.R.S. § 11-951 through § 11-954 and declare this Agreement to be in proper form and within the powers and authority granted to the COUNTY under the laws of the State of Arizona. No opinion is expressed as to the authority of the State to enter into this Agreement.

DATED this 13th day of Oct., 2005.



County Attorney

Agenda Activity: Action
 Department: Transportation
 Category: Regional Development Services
 Contact: Brenda Zambelli
 Return to: Brenda Zambelli
 Location: DEPT OF TRANSPORTATION ADMIN BLDG

Agenda Number: C-64-06-057-2-00
 Phone: 506-4616
 Continued from:

Action Requested:

Approve the Intergovernmental Agreement with ADOT for Federal funding for the installation of updated equipment (cantilever arms and LED Flashers) at the Railroad Crossing located at Bell Road and Grand Avenue, at a cost of \$67,914.00.

Complete description of action requested:

Congress has authorized appropriations for the erection of automatic warning signals, automatic gate arms, plank crossings, pavement markings, and other railroad related appurtenances. The County has selected a project and has completed the plans, specifications, and estimates, and as required, submitted them to the State and Federal Highway Administration (FHWA) for their approval. The interest of the State in this Project is in the acquisition of Federal Funds for the use and benefit of the County and is authorized as the designated agent. The State will submit a program containing the aforementioned project to FHWA with the recommendation that it be approved. If the Project is approved for construction by FHWA and the funds are available for construction, the State with the aid of FHWA will authorize the County to proceed with the work and will request the maximum federal funds available. The County will perform the work and will upon completion, be responsible to provide proper maintenance; exclusive of maintenance by the Railroad Company of its facilities, to include, but not limited to: traffic signals, islands, curbs and markings, etc. for the purpose of regulating, warning and guiding traffic.

Supervisory District #4

PERFORMANCE MEASURES:

Program: Support Transportation Systems

Activity: Project Partnerships

Performance Measures: % of MCDOT projects that go to bid and are eligible for partnerships and have them in place.

Anticipated Results: Federal Funds for Railroad Crossing improvements.

Expenditure Impact by FY(s):

No Impact

Routing: Meeting Date: 10/19/2005		
Legend X=Pending A=Approved R=Rejected		
CNTY_ENGR	LEGAL	OMB
A	A	A



"Please return an executed original to the Clerk of the Board of Supervisors."



TERRY GODDARD
Attorney General

OFFICE OF THE ATTORNEY GENERAL
STATE OF ARIZONA

CIVIL DIVISION
TRANSPORTATION SECTION
Writer's Direct Line: 602.542.8855
Facsimile: 602.542.3646
E-mail: Susan Davis@azag.gov

INTERGOVERNMENTAL AGREEMENT
DETERMINATION

A.G. Contract No. KR05-0839TRN (**JPA 05-047**), an Agreement between public agencies, i.e., The State of Arizona and Maricopa County, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED: November 8, 2005

TERRY GODDARD
Attorney General

A handwritten signature in cursive script that reads "Susan Davis". The signature is written in black ink and is positioned above a horizontal line.

SUSAN E. DAVIS
Assistant Attorney General
Transportation Section

SED:mjf:933571
Attachment